"ON BEING MENTIONED"

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 5881 of 2007

Oral order:

The writ petition is listed under the caption "for being mentioned" for some clarification in the order dated 28.09.2007, passed by this Court, disposing of the writ petition.

At the request of both the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC, the order dated 28.09.2007, passed by this Court, disposing of the writ petition, is recalled.

The petitioner, while working with the respondents-APSRTC as Driver, met with an accident on 18.05.2005, and sustained grievous injuries. The petitioner was referred to the Medical Board. The petitioner states that the respondents on the ground that he became medically unfit kept him out of employment from 15.02.2006 and did not pay him any salary. While so, he states that he made representation dated 12.06.2006 to the 2nd respondent to provide him alternative employment. However, without providing any alternative employment, the 2nd respondent by order dated 29.08.2006 retired him on medical grounds. He further states that as he was unable to make both ends meet, he made representation dated 24.09.2006 requesting the 2nd respondent to settle his retrial benefits. Acting on the said representation, certain amounts, such as PF, gratuity etc., were paid to be petitioner. Now aggrieved by the action of the respondents in not providing him alternative employment, the petitioner filed the present

writ petition.

The learned Standing Counsel for the respondents-APSRTC submits that since the petitioner upon being retired from service on medical grounds, requested the respondents to settle his retrial benefits, and he having received the retrial benefits, now cannot contend that he is entitled to alternative employment.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and perused the record produced by the respondents.

Admittedly, the petitioner on appeal was referred to the Medical Board. Even before the Medical Board declared the petitioner medically unfit, he was kept out of employment, and he was not paid any salary. Based on the opinion of the Medical Board, the 2nd respondent by order dated 29.08.2006, retired the petitioner on medical grounds. While the appeal of the petitioner was pending, the petitioner made representation dated 12.06.2006 requesting the 2nd respondent to provide alternative employment. However, the 2nd respondent without considering the same, based on the opinion of the Medical Board, retired him from service on medical grounds.

However, before the petitioner was retired on medical grounds, he made representation dated 24.09.2006 requesting the 2nd respondent to settle his retrial benefits. Acting on the said representation, the 2nd respondent settled certain retrial benefits. It is the case of the respondents that the petitioner has himself requested the 2nd respondent to settle the retrial benefits, and he having received the retrial benefits, must be treated has having relinquished his right to claim alternative employment, and as such, he now cannot file the writ petition and claim alternative employment. I am unable to agree with

this contention of the petitioner, for the petitioner in his representation dated 24.09.2006 merely requested the 2nd respondent to settle his retrial benefits, and it is his case that he made such a representation because of his financial distress. At any rate, in the said representation, the petitioner except requesting the 2nd respondent to settle his retrial benefits, has nowhere stated that he is giving up his right to claim alternative employment. In fact, it is his specific case that because of non-payment of salary, and unable to bear the starvation of his family, he has made such a request for settlement of his retrial benefits. The fact that the petitioner was not paid salary after he was kept out of employment has not been denied by the respondents in their counter.

Be that as it may, inasmuch as the petitioner much before retiring him on medical grounds had made representation dated 12.06.2006 requesting the 2nd respondent to provide him alternative employment, the respondents now cannot contend that since the petitioner himself made representation dated 24.09.2006 requesting the 2nd respondent to settle his retrial benefits, and he having received the retrial benefits, is not entitled to claim alternative employment.

In the circumstances, I deem it appropriate to dispose of the writ petition with the following directions:

The respondents shall consider the case of the petitioner for providing alternative employment in terms of the scheme framed under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, expeditiously, preferably within a period of two months from the date of receipt of a copy of this order. In the event, the respondents provide alternative employment to the petitioner, the petitioner shall return the amounts paid to him by the respondents pursuant to his retirement on medical

grounds.

Accordingly, the writ petition is disposed of. No costs.

N.V. RAMANA, J.

Dated: 30th October, 2007.
KSR